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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,705	12/10/2001	Eiji Ujyo	1095.1205	3637

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EXAMINER
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BENGZON, GREG C

ART UNIT	PAPER NUMBER
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2144

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/006,705

Applicant(s)

UJYO ET AL

Examiner

Greg Bengzon

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,3,6-8 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-3, 6-8, 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This application has been examined. Claims 2-3, 6-8, 13-16 are pending.

#### ***Priority***

The effective date of the subject matter claimed in the application is December 18, 2000.

#### ***Making Final***

Applicant's arguments filed 11/29/2006 have been fully considered but they are not persuasive.

The claim amendments regarding – *'calculating a total response processing time in proportion to the estimated processing time per response and the number of delivery destinations'* – and – *'estimated processing time as a processing time required for the computer to process each single response which the delivery destinations are supposed to send back to the computer upon receipt of each group of packets.'* – significantly alter the scope of the claims and necessitate a new search. Furthermore, the amendments do not overcome the disclosure by the prior art as shown below.

The Examiner is introducing new grounds for rejection and making this action FINAL.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 6-8, 13-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Gemmell (US Patent 6678855) in view of Chiu et al (US Patent 6505253), hereinafter referred to as Chiu, further in view of Lo et al. (US Patent 6122483).

Gemmell disclosed (re. Claims 13 ) generating groups of data, each including at least one data packet from a given set of data packets to be delivered (Gemmell – Figure 15, Column 4 Lines 40-45) ; (re. Claims 13 ) repeating delivery of each of the groups as many times as specified by said determining (Gemmell – Column 2 Lines 25-35, Column 7 Lines 25-30); (re. Claims 13 ) determining a number of times each of the groups is delivered; (Gemmell – Column 7 Lines 25-30, Column 12 Lines 40-45);

Gemmell disclosed (re. Claim 13 ) specifying a number of delivery destinations to which data is to be delivered (Gemmell – Column 7 Lines 1-5).

However Gemmell (re. Claim 13) did not disclose wherein the delivery destinations respond to the delivery of groups of packets.

Chiu disclosed (re. Claim 13) wherein the delivery destinations respond to the delivery of groups of packets (Chiu- Column 18 Lines 10-15) according to a ACK interval (Chiu- Column 35 Lines 65) and also according to randomly selected timing (Chiu-Column 3 Lines 10-15) to prevent too many ACK messages from reaching the transmitting station at the same time (Column 8 Lines 15-20).

Chiu disclosed a rate control mechanism for multicast transmission. Chiu disclosed (re. Claim 13) , estimating a processing time (Chiu – Column 35 Lines 35-40 ‘TTL scope’, Column 16 Lines 30-35) required to handle each single response from the delivery destinations (Chiu-Column 22 Lines 25-30) ; (re. Claim 13) calculating a total response processing time; (Chiu – Column 35 Lines 35-40, Column 16 Lines 30-35) (re. Claim 13) delivering control information (Chiu- Column 35 Lines 45-60) including the total response processing time, (Chiu – Column 35 Lines 60-65, Column 39 Lines 30-35) to the delivery destinations so that the delivery destinations will respond at a randomly selected timing (Chiu-Column 3 Lines 10-15) within the total response processing time (Chiu – Column 35 Lines 35-40 ‘TTL scope’, Column 16 Lines 30-35) after each group of data packets are received ;

Gemmell and Chiu are analogous art because they present concepts and practices regarding reliable transmission methods for multicasting, while accounting for the congestion rates in the network. (Gemmell – Column 1 Lines 45-50, Column 4 Lines

Art Unit: 2144

15-25; Chiu – Column 11 Lines 60-65) At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teachings of Chiu into methods and system of Gemmell. The suggested motivation would be, as Chiu suggests (Chiu – Column 9 Lines 35-40), the transmission rate should be high so as to fully use the bandwidth of the network, and should be sufficiently low that packets are not lost due to congestion, or to the inability of a receiver station to keep up with the transmitter.

However, Gemmell-Chiu did not disclose (re. Claim 13) *calculating a total response processing time in proportion to the estimated processing time per response and the number of delivery destinations*

Lo disclosed (re. Claim 13) calculating a total response processing time in proportion to the estimated processing time per response (Lo-Column 9 Lines 35-40, 'response time plus propagation delays', Column 9 Lines 30-35, 'The timer interval is one in which is adequately long for each of the recipient subscriber units receiving a multicast message being transmitted on a previously specified traffic channel to respond') and the number of delivery destinations response (Lo-Column 6 Lines 60 thru Column 7 Lines 10)

Gemmell, Chiu, and Lo are analogous art because they present concepts and practices regarding reliable transmission methods for multicasting, while accounting for

Art Unit: 2144

the congestion rates in the network. At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teachings of Lo into methods and system of Gemmell-c1. The suggested motivation would be, as Lo suggests (Lo-Column 2 Lines 15-20), for multicast acknowledge message to be made while minimizing channel resources.

Gemmell-Chiu-Lo disclosed (re. Claim 2) wherein the group generating determines a number of data packets (Chiu-Column 18 Lines 15-20) included in each group (Gemmell – Column 3 Lines 55-60).

Gemmell-Chiu-Lo disclosed (re. Claim 3) wherein the group generating unit determines the total amount of data (Chiu-Column 39 30-50) included in each of data packets included in each group (Gemmell – Column 3 Lines 55-60) according to the state of a communication line or delivery destination ( Chiu- Column 39 Lines 40-50).

Gemmell-Chiu-Lo disclosed (re. Claim 6) measuring a congestion state of a system based on time needed for accessing a memory and the state of the load on a processor (Chiu - Figures 5-6, Column 13 Lines 40-50, Column 15 Lines 45-50).

Gemmell-Chiu-Lo disclosed (re. Claim 7) redelivering a previously delivered data packet when one of the delivery destinations has reported that the data packet could not be received. (Chiu – Column 16 Lines 20-25)

Claim 8 is rejected on the same basis as Claim 13.

Gemmell-Chiu-Lo disclosed (re. Claim 14) further comprising repetitively delivering (Gemmell – Column 7 Lines 25-30) the groups before the delivery destinations respond to delivery (Chiu- Column 18 Lines 10-15)

Gemmell-Chiu-Lo disclosed (re. Claim 15) wherein a number of times each of the groups generated by the group generating unit is delivered is greater than one (Gemmell – Column 7 Lines 25-30, Column 12 Lines 40-45);

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



Claims 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Gemmell (US Patent 6678855) in view of Chiu et al (US Patent 6505253), hereinafter referred to as Chiu, further in view of Lo et al. (US Patent 6122483), further in view of Bergsson et al. (US Publication 2002/0071388).

While Gemmell-Chiu-Lo substantially disclosed the invention Gemmell-Chiu-Lo di not disclose (re. Claim 16), wherein the estimating determines the processing time per response, based on measurement of processing load of the computer.

Bergsson disclosed (re. Claim 16), wherein the estimating determines the processing time per response, based on measurement of processing load of the computer. (Bergsson-Paragraph 43, *' sending terminal calculates a throughput rate based upon returned acknowledgement messages'*)

Gemmell ,Chiu, Lo and Bergsson are analogous art because they present concepts and practices regarding reliable transmission methods for multicasting, while accounting for the congestion rates in the network. At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teachings of Bergsson into methods and system of Gemmell-c1-Lo. The suggested motivation

would be, as Bergsson suggests (Bergsson-Paragraph 20), to allow for rapid adjustments in the transmission rates according to the system throughput.

### ***Response to Arguments***

Applicant's arguments filed 11/29/2006 have been considered but are moot in view of the new ground(s) of rejection.

The Applicant presents the following argument(s) *[in italics]*:

*'...in contrast to Chiu, currently amended claim 13 specifically recites that the total response processing time is, "in proportion to the estimated processing time per response and the number of delivery destinations."*

The Examiner presents prior art by Lo disclosing that *total response processing time is "in proportion to the estimated processing time per response and the number of delivery destinations."*

The Applicant presents the following argument(s) *[in italics]*:

*'...The feature of new claim 16 is also not disclosed or suggested by Chiu, as Chiu does not disclose or suggest, "determines the processing time per response; based on measurement of processing load of the computer."*

Art Unit: 2144

The Examiner presents prior art by Bergsson which determines the processing time per response, based on measurement of processing load of the computer.

### ***Conclusion***

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to the enclosed PTO-892 form.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

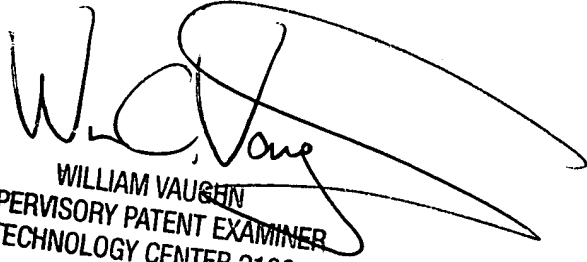
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571)272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2144

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gcb

  
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